

INSTRUCTION NO. [6-301(g)(1)]

[Issues in Theft by Embezzlement]

To convict the Defendant of the charge of theft of property by embezzlement, the State must prove the following elements:

[1. That the Defendant purposely or knowingly obtained or exerted unauthorized control over the property of [name of employer], the Defendant's employer;

or

That the Defendant purposely or knowingly obtained or exerted unauthorized control over property [name of owner of property] which was entrusted to the Defendant;

2. That the Defendant had the purpose to deprive [name of property owner] of the property.]

[1. That the Defendant purposely or knowingly obtained by deception, control over the property of [name of employer], the Defendant's employer;

or

That the Defendant purposely or knowingly obtained by deception control over the property of [name of owner of property] which was entrusted to the Defendant;

2. That the Defendant had the purpose to deprive [name of owner] of the property.]

3. That the value of the _____[did not exceed \$1,000]
[exceeded \$1,000 but did not exceed \$10,000] [exceeded \$10,000.00].

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
District Judge

Source: MCJI 6-301(g)(1)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Theft by Embezzlement, Source and Comments]

SOURCE: MCA § 45-6-301(7) (2001).

COMMENT: Cite as MCJI 6-301(g)(1).

A brief description of the property should be inserted in the blanks. Use only the applicable words and phrases. Use only the appropriate one of the disjunctive paragraphs of the third element. Note that the penalty provisions of Mont. Code Ann. § 45-6-301 are somewhat confusing when applied to theft by embezzlement. See § 45-6-301(8)(a), (b) and (c).

This section permits aggregation of amounts involved in theft in determining pecuniary loss. *See* MCA § 45-6-301(8).